

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5093 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHOLA NANUBHAI KAHAR

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

Shri Kamal Mehta, learned AGP

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 04/11/96

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 26th June 1996 passed by the Commissioner of Police, Vadodara City under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act"). It is alleged that the petitioner is a bootlegger and he has indulged into anti social activities adversely affecting the public order. It is stated that four cases against the petitioner have been registered for the offences under the provisions of Bombay Prohibition Act, 1949.

2. This Court by order dated 16.7.1996 made the rule returnable on 26.8.1996. No reply has been filed. However, the Special Civil Application is being opposed by Shri Kamal Mehta, learned AGP.

3. Learned counsel for the petitioner relying on the decision of the Apex Court in the case of Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City and another, AIR 1989 SC 491, has contended that simply because a person is a bootlegger, it cannot be said that his activities have necessarily adversely affected the public order.

4. I have gone through the material available on record with the assistance of the learned counsel. There is nothing on record to indicate that the activities of the petitioner have been adversely affected the public order or it is likely to affect the public order. In my view the detention of the petitioner cannot be sustained in law.

5. In view of the aforesaid the Special Civil Application is allowed and the order of detention dated 26th June 1996 is quashed and set aside. The detenu shall be released forthwith if the detenu is not required in any other case. Rule is made absolute.

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